REMARKS

This Response is submitted in reply to the Office Action dated October 7, 2010. Claims 44 to 86 are pending in the present application. Claims 44, 64, 74, 84 and 85 are in independent form. Claims 44 to 63 have been amended for clarity.

A Request for Continued Examination is submitted herewith. Please charge Deposit Account No. 02-1818 for all payments due in connection with this Request for Continued Examination and this Response.

As noted above, Applicant has filed a Request for Continued Examination with this Response. Accordingly, Applicant requests that the Examiner allow the application or provide an Office Action which identifies ". . . any claims which he or she judges, as presently recited, to be allowable and/or . . . suggest any way in which he or she considers that rejected claims may be amended to make them allowable" in accordance with §707.07(d) of the MPEP.

The Office Action rejected Claims 44 to 63 under 35 U.S.C. §101. Applicant respectfully disagrees. Nevertheless, Applicant has amended Claims 44 to 63 to address the Office Action's rejection. Accordingly, Applicant respectfully requests that the rejection of Claims 44 to 63 under 35 U.S.C. §101 be reconsidered and withdrawn.

The Office Action rejected Claims 44 to 54, 64 to 69, 74 to 79 and 84 to 85 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2005/0065890 to Benaloh ("Benaloh") in view of U.S. Patent Application Publication No. 2005/0253734 to Kang et al. ("Kang") and in further view of U.S. Patent No. 6,529,949 to Getsin et al. ("Getsin").

Paragraph [0061]of Benaloh discloses:

> [a]ll or part of the unencrypted content is partitioned into multiple partitions. The partitioning of the content can take place over the entire content, or just a portion. For example, an entire movie can be partitioned, or separate individual partitions can be defined within the body of the movie itself. In the movie embodiment, these partitions are also termed "clips". A clip or partition should be large enough to support a fingerprint or watermark therewithin. In the illustrated example, multiple partitions corresponding to the unencrypted content 800 are shown at 802, 804, 806, 808, and 810. Once the partitions have been defined one or more copies of each partition or clip is made to define multiple corresponding partition sets. Each of the individual partitions of a partition set is then separately and

uniquely marked, 11 as by any suitable fingerprinting or watermarking technique. For example, in the illustrated figure, partition 802 has a corresponding partition 802a. Partition 802 is designated as "A" and partition 802a is designated as "A*" to indicate that the partitions are corresponding partitions that have been separately and uniquely marked with a different fingerprint or watermark. Together the individual partitions 802, 802a define a partition set 812. The same can be said of the remaining partitions. That is, each partition 804, 806, 808, and 810 has a corresponding respective partition 804a, 806a, 808a, and 810a. These corresponding partitions define partition sets 814, 816, 818, and 820 respectively. Each of the partitions within a partition set is uniquely and separately marked with a different fingerprint or watermark. It will be appreciated that any portion of the partition or clip can be fingerprinted. For example, with a movie, the audio and/or video bit stream could have a fingerprint inserted therein. Flexibility is provided in that any known or subsequently developed fingerprinting or watermarking technique can be utilized.

The Abstract of Kang discloses:

[a] data recording and reproducing apparatus supporting multi-path recording reproduction, and an information storage medium on which multi-path data is recorded. The information storage medium includes at least one clip that is a recording unit containing presentation data for respective paths, wherein presentation data in a selected path is continuously reproduced without changing paths, and additional path information regarding a block of the path is recorded separately from the presentation data. Accordingly, it is possible to more effectively use a recording space and reduce the frequency of jumping to clips, thereby effectively reading the multi-path presentation data from the information storage medium.

The Abstract of Getsin discloses:

[a] system, method and article of manufacture are provided for remotely controlling content stored on a local computer connected to a network system such as the Internet. The invention allows content such as DVD Video content to be locked so that play can only be accomplished through verification of user identity and also allows augmentation and supplementation of the content provided by the video from a remote server. In addition, upon verification of user client credentials, the present invention allows the locally stored content to be supplemented with additional content delivered over the network system. Furthermore, the present invention allows content stored locally on a client device to be remotely controlled to play synchronously on a plurality of client devices.

Page 3 of the Office Action stated that:

Benaloh discloses a plurality of different individual content management units [i.e. partitioning of content, 0061], at least one of the plurality of different content management units including encryptable data (see fig. 9 sheet 9)[0064] corresponding to: (i) at least one content file, the content file including at least

one of a data file(i.e. clip) reproducible by an information processing apparatus and a program file executable by the information processing apparatus.

The Office Action acknowledged that Benaloh does <u>not</u> disclose a content management unit which includes encryptable data corresponding to at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file. For example, page 4 of the Office Action stated that, "Benaloh is silent on a content reproduction section specification file, and a content reproduction processing program file."

Moreover, page 4 of the Office Action further acknowledged that, "Benaloh and Kang are silent for an application index file and an application execution file." The Office Action turns to Getsin for such disclosure.

In other words, Applicant submits that the Office Action acknowledged that Benaloh does <u>not</u> disclose a content management unit which includes encryptable data corresponding to <u>both</u>: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; <u>and</u> (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

However, the Office Action concluded that:

> Kang discloses a content reproduction section specification file(i.e. playlist), and a content reproduction processing program file(i.e. movie object)[0018,0040, 0045,0051]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a content reproduction section specification file, and a content reproduction processing program file of Kang with Benaloh, because both are analogous in the art of copy protection, it would have been obvious to include a movie object on a medium that has a playlist, the motivation is that a DVD has clips that corresponds to a recording cell that is a recording unit and the playlist and the playitem correspond to a program and a reproducing cell that are reproduction units, thus the playlist that is linked to playitems is a portion of a clip that indicates starting and finishing times of reproduction in clip[0040-0041 of Kang] ...

> It would have been obvious to one of ordinary skill in the art at the time of the invention to include an application index file and an application execution file of Getsin with Benaloh-Kang combination, all three are analogous in the art of copy protection, the motivation to include a an application index file(i.e. title) and a application execution file of Getsin with Benaloh-Kang combination is that each

portion of video to be unlocked can be authored into a separate title, thus when the consumer is allowed to unlock the video the video can be played(see col. 31, lines 1-11, 18-29 of Getsin).

Applicant respectfully disagrees and submits that it would <u>not</u> have been obvious to one of ordinary skill in the art at the time of the invention to look to Kang to combine Kang's interpreted content reproduction section specification file and content reproduction processing program file with Benaloh and then to look to Getsin to combine Getsin's interpreted application index file and application execution file with Benaloh.

Moreover, Applicant submits that it would <u>not</u> have been obvious to one of ordinary skill in the art to include these interpreted features of Kang and Getsin <u>within a partition</u> of Benaloh's content (i.e., the Office Action's interpreted content management unit of independent Claim 44).

Applicant submits that the Office Action appears to ignore the warnings of *KSR International Company v. Teleflex Inc., et al.,* 550 U.S. 398 (2007) that a "factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning." In this case, the Office Action is improperly working backwards from the claimed invention to piece together elements from <u>multiple</u> different references to form the claimed invention with no regard for the explicit teachings of those references. pick and choose certain elements from Kang and Getsin and then combine those certain elements with Benaloh to recreate the information recording medium of independent Claim 44 to form the basis of these rejections.

In other words, only with the benefit of improper hindsight reconstruction is the Office Action able to suggest that it would have been obvious to one of ordinary skill in the art to: (1) partition the content of Benaloh; <u>then</u> (2) after Benaloh's content has been partitioned, <u>add</u> Kang's interpreted content reproduction section specification file and content reproduction processing program file to Benaloh's partitioned content; <u>then</u> (3) <u>further add</u> Getsin's interpreted application index file and application execution file to Benaloh's partitioned content; and then (4) carry out the remainder of Benaloh's process for watermarking/fingerprinting each partition, etc. Such picking and choosing among individual parts of assorted prior art references as a mosaic to recreate a facsimile of the information recording medium of independent Claim 44 is clearly improper.

Accordingly, for at least these reasons, the rejections of Claims 44 to 54, 64 to 69, 74 to 79 and 84 to 86 under 35 U.S.C. §103(a) are improper and should be withdrawn.

However, assuming, arguendo, that Benaloh, Kang and Getsin are combinable in the manner suggested by the Office Action, Applicant submits that the information recording medium resulting from the combination of Benaloh, Kang and Getsin does not render obvious a content management unit which includes encryptable data corresponding to both: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

The Office Action appears to interpret Benaloh's partitioned content as the content management unit of the information recording medium of independent Claim 44. Applicant submits that Benaloh's content corresponds to, for example, a video such as a movie. Continuing with this example, when partitioned, the movie is divided into clips (i.e., partitions). Applicant submits that, as acknowledged by the Office Action, these clips (or partitions) do not correspond to both: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file. That is, under this interpretation, Benaloh's partitioned content includes, for example, at least one content file (e.g., the clip), however, Benaloh's partitioned content does not include at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

Kang does not cure this deficiency of Benaloh. Applicant calls attention to the fact that Benaloh is deficient of a content management unit as claimed. That is to say that Benaloh is not simply deficient of "at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file," but is rather deficient of a content management unit which includes encryptable data corresponding to both: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the

information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

The Office Action argues that Kang discloses at least one of a content reproduction section specification file, a content reproduction processing program file. Regardless of whether or not Kang discloses at least one of a content reproduction section specification file, a content reproduction processing program file, Applicant submits that Kang also does not disclose a content management unit which includes encryptable data corresponding to both: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file. That is, Kang also does not disclose the content management unit as claimed.

For reasons similar to those discussed above regarding Kang, Applicant submits that Getsin also does not cure the deficiencies of Benaloh.

Therefore, Applicant submits that, unlike the non-transitory information recording medium of amended independent Claim 44, the information recording medium resulting from the combination of Benaloh, Kang and Getsin does not render obvious (without the benefit of improper hindsight reconstruction) a plurality of different, individual content management units, at least one of the plurality of different content management units including encryptable data corresponding to: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

For at least these reasons, Applicant submits that amended independent Claim 44 is patentably distinguished over Benaloh, Kang and Getsin and in condition for allowance

Claims 45 to 54 depend from amended independent Claim 44 and are also allowable for the reasons given with respect to amended independent Claim 44 and because of the additional features recited in these Claims.

Amended independent Claims 64, 74, 84 and 85 each include certain similar elements to amended independent Claim 44. For reasons similar to those discussed above with respect to amended independent Claim 44, amended independent Claims 64, 74, 84 and 85 (and dependent Claims 65 to 69, 75 to 75 and 86) are each patentably distinguished over Benaloh, Kang and Getsin and in condition for allowance.

The Office Action rejected Claims 55 to 63, 70 to 73 and 80 to 83 under 35 U.S.C. §103(a) as being unpatentable over Benaloh in view of Kang and in further view of Getsin and in yet further view of U.S. Patent Application Publication No. 2006/0212400 to Kamperman et al. ("Kamperman").

The Abstract of Kamperman discloses that:

> [t]o ensure that digital rights cannot be forged or tampered with, they can be digitally signed. However, this means that updating the digital rights is no longer possible, as this would invalidate the digital signature. The present invention proposes that the issuer of digital rights issues rights which are signed in elementary pieces, rather than as a whole. Rather than issuing a right to play back a piece of content three times, the provider issues for example three rights to play back the content once in a particular AD, of which two may be transferred to other domains. The digital rights are individually protected by signatures and it is no longer possible to forge digital rights. As an enhancement the rights that can be transferred are indicated as such and stored securely to prevent tampering. When the right is transferred, it must be signed by the person who originally received it.

Page 11 of the Office Action stated that:

> [i]t would have been obvious to one of ordinary skill in the art the time of the invention to include a status management table in which the network associated status is stored of Kamperman with the Benaloh-Kang-Getsin combination, because when accessing digital content at home it is harder to control illegally redistributing of the content[0008 of Kamperman], the motivation to include the status of network is that an authorized domain such as that disclosed in Kamperman is that within the authorized domain content is protected[0009 of Kamperman].

Applicant respectfully disagrees. However, regardless of whether or not it would have been obvious to combine Kamperman with the information recording medium resulting from the combination of Benaloh, Kang and Getsin, as discussed above, the information recording medium resulting from the combination of Benaloh, Kang and Getsin does not render obvious a

plurality of different, individual content management units, at least one of the plurality of different content management units including encryptable data corresponding to: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

Kamperman does not cure this deficiency of the information recording medium resulting from the combination of Benaloh, Kang and Getsin.

Therefore, unlike the non-transitory information recording medium of amended independent Claim 55, the information recording medium resulting from the combination of Benaloh, Kang, Getsin and Kamperman does not render obvious (without the benefit of improper hindsight reconstruction) a plurality of different, individual content management units, at least one of the plurality of different content management units including encryptable data corresponding to: (i) at least one content file, the content file including at least one of a data file reproducible by an information processing apparatus and a program file executable by the information processing apparatus; and (ii) at least one of a content reproduction section specification file, a content reproduction processing program file, an application index file, and an application execution file.

For at least these reasons, Applicant submits that Claim 55 is patentably distinguished over Benaloh, Kang, Getsin and Kamperman and in condition for allowance
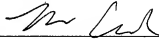
Claims 56 to 63, 70 to 73 and 80 to 83 each include certain similar elements to Claim 55. For reasons similar to those discussed above with respect to Claim 55, Claims 56 to 63, 70 to 73 and 80 to 83 are each patentably distinguished over Benaloh, Kang, Getsin and Kamperman and in condition for allowance.

An earnest endeavor has been made to place this application in condition for formal allowance, and allowance is courteously solicited. If the Examiner has any questions regarding this Response, Applicant respectfully requests that the Examiner contact the undersigned.

Respectfully submitted,

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